REVIEW OF PRIVATE TRAINING INSTITUTIONS ACT & REGULATIONS

Interim Report

Submitted
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GOVERNMENT OF
NEWFOUNDLAND
AND LABRADOR
Department of Education

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Introduction

Private training institutions, as we know them today, have existed for approximately 20 years in Newfoundland and Labrador. Several were established in the late 1970s and early 1980s when the need for computer technology in business offices was recognized. By 1990, there were 24 institutions registered, seven of which were correspondence schools centered outside the Province. Today, there are 57 such institutions, excluding correspondence schools.

Enrolments have mushroomed over the past decade. Between 1989 and 1995, for example, enrolments in major programs of at least one academic year increased by over 500 per cent, compared with a 22 per cent increase in the public system. The actual number of students now registered in such programs in private institutions exceeds the number in the College of the North Atlantic.(1)

Several reasons have contributed to this growth, including the following:

1. Private institutions offer programs that are often shorter and more focused than those offered in the public colleges, making the goal of a job more immediate. They provide more flexibility in entering and completing programs, and promise a package of services that include help in job placement.

2. Institutions use extensive advertising, focusing on their service orientation to individual students.

3. Federally-sponsored programs, particularly ENCARP and TAGS, made available large sums of money for training.

4. Programs became readily accessible to learners throughout the Province.

5. Student loans became available for more students in private training institutions.

6. Waiting lists existed in certain programs in the public system.

7. Flexible standards for entrance to many programs made it possible for large numbers of students who would not be admitted to public colleges to attend private ones. There is evidence that private institutions served a rather different clientele or at least a segment of the student market with differing educational backgrounds from those served by public institutions.

The need for regulatory reform was recognized by the Provincial Government and the industry in the mid 1990s. At that time, discussions began between officials of the Department of Education and the Newfoundland and Labrador Association of Career Colleges concerning possible changes in the Regulations pursuant to the Private Training Institutions Act of 1988. These discussions made considerable progress, but this past summer, even before the closure of the Career Academy, the Minister of Education concluded that the regulatory review process would be facilitated by the appointment of a person to conduct a series of consultations on the Act and the Regulations.(2). This *Interim Report* outlines the conclusions reached and recommendations proposed concerning several important issues as a result of these consultations.(3)

The need to modernize the legislation governing private training institutions was recognized by many of the individuals and groups who took part in this Review. Concerns were expressed about the perceived

overproduction of graduates in certain areas of employment, the debt loads of students as a result of high tuition fees, what was seen as low standards for admission to many programs, and the nature of the advertising being used. Many felt that unrealistic expectations were being created by recent marketing strategies. Some, of course, rejected the concept of private training totally, either for reasons of self-interest or because they genuinely believed that education and the profit motive were incompatible. While many of those participating in the consultations acknowledged the contributions of the industry to individual development and meeting the labor needs of our economy, there were consistent demands for greater students protection and more accountability in the private training sector.

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1. The Final Report will provide a more detailed analysis of the growth of private training institutions and a profile of their current status. An outline of the contents of that Report is attached as Appendix A.

2. See Appendix B for the Terms of Reference

3. These recommendations will be further discussed and others included in the Final Report. The Final Report will also list the consultations conducted, the briefs received, and the studies undertaken in the process of conducting the Review.

Underlying Goals

There are several important goals underlying the recommendations made in this Report. First, the recommendations are designed to provide a system of quality controls, built into the licensing and monitoring processes. The monitoring process must include both educational and financial components. Second, the recommendations aim to provide increased consumer protection, through such initiatives as the provision of more information, conflict-resolution mechanisms for students, and enhanced student contracts. The provision of adequate bonding and a training completion fund will also contribute to consumer protection. The third underlying goal of these proposals is the creation of a regulatory environment that will result in increased confidence and stability in the private training industry and a fair environment in which institutions may operate. That environment will require enhanced industry participation in the regulatory process. There are many quality private training programs and institutions in Newfoundland and Labrador, and an environment must be created which will result in increased numbers of such programs and institutions.

Throughout Canada, reviews of the private training sector have either been completed recently or are now in process. One of the most comprehensive review documents was prepared for submission to the Ontario Government in 1993.[4] In arguing the need for new legislation to protect student interests, the document had this to say:

"The current legislation is a patchwork of unrelated consumer protection items which were developed to respond to the situation as it existed 20 years ago. It lacks a coherent philosophic framework within which not only current but also future concerns and developments can be addressed. Consumer protection is now understood to be less a matter of simply promulgating a catalogue of activities which are illegal for the deliverer of a good or a service (something which the current legislation does well), and more a matter of creating a healthy and fair marketplace where transactions are based on an understanding of and an appreciation for mutual rights and responsibilities, and on promoting quality through informed decisions, good business practices, and accessible remedies (something which the current legislation does not and cannot provide)".

This statement was a precursor to the conclusions reached as a result of reviews of private training in several other provinces. It certainly can be used to describe the current regulatory framework in this Province, even though the legislation has been in place for only ten years. The legislation is out of step with the current marketplace. It certainly will not meet the needs of the future.

The recommendations of this *Interim Report* are presented under the following headings:

1. Registration and Re-registration

2. Bonding

3. The Training Completion Fund

4. The Private Training Corporation

5. Inspection and Monitoring

6. Student Contracts

7. Student Conflict/Complaint Resolution

8. Other Recommendations.

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4. The Ontario document was most helpful in the planning of this Review.

Registration and Re-Registration

Current Provisions

Major provisions in legislation and regulations governing the initial registration of private training institutions in Newfoundland and Labrador are included in Sections 6(1), 6(2) and 8(1) of the Act, Sections 4(1) through 4(6) and 5(1) of the Regulations, and Chapters 3, 4 and 5 of the Policy Document issued by the Department of Education in 1995. Sections 6(2), 6(3) and 8(1) of the Act and Section 4(7) and 5(1) of the Regulations deal with renewal of registration. Section 8(2) of the Act gives the Superintendent the authority to refuse to renew or to suspend or revoke a registration. Sections 9 and 10 describe the appeal process when the Superintendent proposes to refuse to grant or review a registration or to suspend or revoke a registration. Sections 5(2) through 5(7) of the Regulations contain the Minister's authority to cancel the registration of a program and an institution.

Comments

The basic requirements for registration of private training institutions in Newfoundland and Labrador are not clearly stated in either the *Act* or the *Regulations*. It is left to the Policy Document to suggest what a Preliminary Program Proposal should contain and, if approved, what the Detailed Program Proposal should address.

While the information required for registration currently outlined in the Policy Document is quite comprehensive, some of it should be required in the *Act* and/or the *Regulations*. The result would be greater consistency in the nature of the applications submitted. Also required by the Department of Education are the resources, both internal and external, to fully assess such applications.

With regard to the renewal of registration, the current policy is one of updating the registered information on an institution and ensuring that the required documents, such as bonding, have been adjusted to correspond to its current operational situation. This process, therefore, is largely a record-keeping one, without assessing the quality of programming or operation. Effective monitoring in the future should involve periodic examinations of selected programs, as part of a quality control system. New institutions could be required to renew their registration annually for the first two years following registration. After that, they could be required to renew registration on a three-year cycle, with a requirement that each of the institution's programs be reassessed.

Recommendations

1. The Private Training Institutions Act should be revised to require more information in and guarantee closer scrutiny of initial applications for registration. The following suggests what might be included in the revised sections:

(1) Every applicant who wishes to obtain a certificate of registration or to have the person's certificate of registration renewed shall apply to the Minister in the form prescribed in the regulations.

(2) Every application must be accompanied by:

(a) a description of the courses to be taught and the method or mode of instruction for the courses;

(b) a training completion plan that complies with the requirements prescribed in the regulations; and

(c) evidence satisfactory to the Minister that:

(i) the applicant is able to comply with the requirements for a private training institution as prescribed in this Act and the regulations;

(ii) the applicant has security in the amount and in the form required by the regulations;

(iii) the applicant will comply with the requirements of the Fund as prescribed in the regulations;

(iv) the applicant is not insolvent and is not likely to be insolvent;

(v) the applicant has obtained any approvals pursuant to any other Acts or laws or from any professional, occupational or other associations connected with the program of instruction proposed for the private training institution;

(vi) the private training institution will be staffed with instructors who meet the requirements that are prescribed in the regulations;

(vii) the private training institution will have the accommodations, facilities, equipment and materials that are prescribed in the regulations to teach the programs of training that will be set out in the applicant's certificate of registration; and

(viii) the applicant has a financial plan for the institution.

(3) An applicant shall provide an external review of the curriculum and shall file, in the form prescribed in the regulations, a report with the application acceptable to the Minister before registration of the individual program is granted and registered programs may from time to time be required to be reviewed.

(4) An applicant shall provide evidence of education need and projected graduate employability data in a form prescribed in the regulations.

(5) The Minister may commission an independent assessment of the program or programs at a cost to the applicant at the time of initial registration.

(6) The Minister may request any additional information from an applicant that the Minister considers necessary to determine whether or not to issue or renew a certificate of registration.[5]

2. The Act should clarify the authority of the Minister to refuse to register or renew a registration or to suspend or revoke a registration. A section on the Bill *(An Act to Regulate Private Career Colleges)* now before the Nova Scotia Legislature is suggestive of the substance of such an amendment regarding initial registration or renewal:

(1) The Minister may refuse to register or renew the registration of a private college

(a) where the information supplied with the application is incomplete;

(b) where the Manager is not satisfied that the applicant has complied with this Act or the regulations;

(c) that has failed to comply with the conditions on a certificate of registration imposed pursuant to this Act or the regulations;

(d) that has previously had a certificate of registration cancelled which was not re-instated by a board under this Act;

(e) that has previously had a certificate of registration or its equivalent canceled in any other province, which was not re-instated by an appeal process in that province;

(f) that has, as one of its principals, a person who was a principal of a private college to which clause (e) or (g) applies;

(g) that has, as one of its principals, a person who was convicted of an indictable offence within the five years preceding the application or who is presently subject to criminal sanctions for conviction of an indictable offence; or

(h) where the applicant previously refused to comply with an order or directive of the Manager.

(2) Notwithstanding subsection (1), the Minister may, when issuing or renewing a certificate of registration, impose a conditional registration for a limited period requiring a private college to make such changes and do such things as the Minister considers necessary to meet the requirements for registration before the expiration of that period.

The Nova Scotia Bill also contains a section dealing with the authority of the Minister to suspend or cancel a program or certificate of registration. A copy of that section is included in Appendix C.

3. The Act should contain a provision granting an applicant the right to be heard if registration or re-registration has been refused or a certificate of registration suspended or revoked. Provision should also be made for the Minister to act immediately to place an institution on probation (to impose conditions) or to suspend or cancel a certificate of registration if it is necessary to protect students or the public interest. Under this condition, the applicant could be granted the opportunity to be heard within a certain number of days of being placed on probation or suspension or cancellation. The concept of probation would required the creation of a "probation" category for institutions and programs.

4. The Act should be amended to clarify the Minister's authority to suspend or cancel an instructor's authorization to teach.

5. Consideration should be given to amending the Act to increase the maximum fines for offenses under the Act.

Notes:

(1) The application process should be streamlined through the use of technology.

(2) Additional resources will be required at the Department of Education to enforce the Act and the Regulations. Some of the extra costs incurred will be recovered from the industry through additional fees.

(3) The application form itself should be restructured to parallel as closely as possible the general criteria applied during an accreditation process.

(4) The renewal of registration and the monitoring process may vary, depending on whether or not the institution and/or programs are accredited. The subject of accreditation will be addressed in the Final Report.

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5. Several provinces, such as Saskatchewan and Prince Edward Island, have similar provisions included in legislation.

Bonding

Current Provisions

There are few references in the Private Training Institutions Act to the security that should be provided by applicants for registration. Section 19(e) states that the Lieutenant-Governor in Council may make regulations "requiring registered private training institutions to be bonded in the form and terms and with the collateral security that is prescribed and providing for the forfeiture of bonds and the disposition of the proceeds". Section 4(4) of the Regulations restates the requirement that a bond accompany an application for registration or renewal of registration, while Section 10 stipulates the size of the bond (from a minimum of $10,000 to a maximum of $75,000) and the reason and procedures for forfeiture and the manner of dispersement of the proceeds of the bond, if it is forfeited.

Comments

Traditionally, bonding has been supported primarily as a means of protecting students' prepaid monies in the event of an untimely closure. In the case of a school closure for whatever cause, the bond was expected to cover the refund of monies which students had paid for services which had not been delivered at the time of closing. We now know how inadequate such an approach is, where individual institutions are expected to become fully liable for student refunds, let alone training completion.

It has been argued that the bonding approach would only be successful for refunding monies paid if the level of bonding were 100 per cent of the maximum amount of unearned revenues held at any one point in time. Many institutions have large intakes at certain times throughout the year, and many of their students receive student loans and pay significant tuition up front. To cover such unearned revenues would be costly indeed. Another mechanism now being used in some provinces and being considered in others is the establishment of a collective compensation fund, called a **Training Completion Fund**. Such a Fund is recommended in this Report.

The establishment of a Training Completion Fund does not eliminate the need for bonding. Bonding can be used to diminish the risk of insolvency. Bonds can be set at a sufficiently high level to require intensive scrutiny of the institution and its ownership by an independent security company so that granting of the bond itself provides the Department of Education and the consumer with a "level of comfort" with the general financial strength of the operation. Having adequate working capital prior to registration would also reduce the risk of closure and enhance protection for students. The cost of the bond would be the responsibility of the applicant.

There are those who suggest that bonds could be eliminated for institutions after a period of operation. That suggestion is rejected in this Report. Such a move could make it easier for an owner to "walk away" from an institution, in the knowledge that the Training Completion Fund would take care of the students. Therefore, both bonding and a Training Completion Fund are considered necessary.

Recommendations

1. The Act should be amended to require bonding with a minimum of $50,000 and a maximum of $150,000, as prescribed in regulations.

2. The Act should also require that in the case of school closure, the proceeds of the bond would be paid to the Fund as a contribution to the cost of training completion.

The Training Completion Fund

Current Provisions

There is no provision in current legislation in this Province for a train-out or training completion fund. Such a fund does exist in provinces such as Saskatchewan, New Brunswick, and Prince Edward Island, and is proposed in a Bill recently introduced into the Nova Scotia Legislature.

Comments

The principle behind this Fund is that students should be provided an opportunity to receive the training they contracted for, rather than a refund of their lost tuition. The Fund is aimed at protecting the student's entire investment. It could be used to help students complete their training in the same facility, using the same instructors where possible, or in another institution providing the same or similar programs. Students collectively, not students from individual institutions, become liable for the cost of training completions. This principle characterizes the general insurance industry. The student, as a consumer, pays a fee for protection.

Several approaches have been used in other provinces to administer this Fund. In Saskatchewan, the Fund is administered by the Minister of Education, who may use it for certain purposes subject to the approval of Treasury Board. The Bill now being debated in the Nova Scotia Legislature prescribes that the Fund is to be administered by the Minister of Finance. The Minister of Education may direct payment out of the Fund, subject to the approval of the Department of Finance. The Fund in New Brunswick, however, is administered by an independent corporation. That is the model being proposed in this Report.

Recommendations

1. The Private Training Institutions Act should be amended to establish a special fund, called a Training Completion Fund. The Fund would consist of:

(1) fees that operators of all private training institutions would pay as required by this Act and its regulations;

(2) any income and earnings from investments of the Fund;

(3) the proceeds of the forfeiture of bonds required as part of institutional registration;

(4) any loans provided to the Fund by the Minister; and

(5) such other sources of revenues as may be prescribed by regulation.

2. The purposes for which the Fund may be used are as follows:

(1) to compensate a student or a third party who has paid tuition fees on behalf of a student for

reasonable costs for the completion of the student's training with another institution, if the first institution with which the student had a contract failed to fulfill its obligation to the student because of closure, OR to refund the student or the third party who paid the tuition fees on the student's behalf, the tuition fees paid, and such reasonable accommodation costs paid by the student or the third party as may be determined by the Corporation;

(2) to pay the cost of monitoring the financial operation of private training institutions, including the analysis of audited financial annual returns as required in regulations;

(3) to pay the expenses of administering and auditing the Fund;

(4) to pay the cost of external mediation of student/institutional conflict as proposed later in this Report;

(5) to reimburse reasonable travel and other out-of-pocket expenses of members of the Board incurred in the discharge of their duties and to pay any honoraria prescribed in regulation and bylaws of the Corporation;

(6) to carry out such other purposes as may be prescribed by regulations.

3. The regulations pursuant to the Act should be amended to require private training institutions to pay a student protection fee of one per cent of tuition into the Fund.

At a certain point in time, given few institutional failures, the Fund could be capped and the student protection fee reduced. At that time, consideration could be given to using the interest on the monies invested for student bursaries and scholarships or other student - related purposes.

The Private Training Corporation

Current Provisions

Sections 4 and 5 of the current Act provide for the establishment of a Private Training Institutions Review Board. The Sections read as follows:

4. (1) The Private Training Institutions Review Board consisting of not less than 5 and not more than 7 members appointed by the Minister is continued.

(2) The Minister may designate 1 of the members of the Board as chairperson and another as vice-chairperson.

(3) A member of the Board shall not hold office for more than 5 consecutive years.

(4) A majority of the members, one of whom shall be the chairperson or vice-chairperson, constitutes a quorum.

(5) The members of the Board shall be reimbursed by the Board for expenses incurred in relation to meetings and the work of the Board in accordance with a scale for expenses that may be approved by the Minister.

5. The Board shall

(1) hear appeals under Section 9;

(2) inquire into matters referred to it by the Minister; and

(3) perform other duties assigned to it by the Minister.

Comments

The establishment of a provincial private training board received widespread support during the consultations conducted in this Review. While several purposes were suggested, there was consensus that the private training sector should have such a mechanism through which it could advise the Department of Education and the government in an ongoing way and share some of the decision-making in the operation of the industry. The need for a mechanism for appealing certain decisions of the Department, as proposed in the current Act, was also recognized.

Two options were considered in the process of preparing recommendations for this Report: one, to recommend the appointment of an advisory board on private training and a separate board to administer the Training Completion Fund; and two, to recommend a combined authority that would serve both functions. The latter option is recommended.

Recommendations

1. The Act should be amended to establish a Private Training Corporation with a Board of Directors consisting of no fewer than five and no more than seven members appointed by the Minister in accordance with the guidelines as may be prescribed in regulations.

2. The purposes of the Board shall be:

(1) to act as an administrator of the Fund;

(2) to invest any monies in the Fund in accordance with prescribed regulations;

(3) to monitor the financial operations of private training institutions in accordance with prescribed regulations. This will involve the analysis of audited annual financial statements and where necessary examining or inquiring into the financial accounts of an institution or causing such examination or inquiry to be carried out in accordance with prescribed regulations;

(4) to monitor student tuition fees;

(5) to hear appeals of any decision of the Minister or Department to refuse registration, to refuse re-registration, or to cancel or revoke a certificate of registration as prescribed in regulations;

(6) to consult with the private training sector and the public on matters relating to private training and make appropriate recommendations to the Minister;

(7) to facilitate accreditation in the private training sector in accordance with regulations;

(8) to carry out such other purposes as may be prescribed in regulations.

Notes:

(1) The Private Training Institutions Review Board provided for in the current Act was never appointed.

(2) The proposed board could include representatives of the Department of Education, the Department of Finance, private training operators, students, and the general public.

Inspection and Monitoring

Current Provisions

Section 13 of the Act provides for the inspection of private training institutions. Section 14 grants authority to the inspector to take the necessary corrective action if the Act or the Regulations are not being complied with. Section 19 provides the Lieutenant - Governor in Council with the authority to make regulations in several program and financial areas. In the Regulations, there are provisions governing the advertising of private training institutions (Section 6), the approval of instructional and sales staff (Section 7, 8, and 9), and the teacher training program required (Section 7[4]). The Policies and Procedures Manual outlines a site evaluation process as follows:

"The on-going site visits play a significant role in the maintenance of quality education. The Department may conduct site visits for various reasons as discussed below.

7.1 ***Routine Site Visits***

Each institution receives routine visits by departmental personnel to ensure that the school is complying with the terms of approval and that standards are maintained.

Prior to visiting a site departmental personnel review the institution's files which includes all the information and documents that were submitted with the registration application. Generally, the institution's administration will be contacted and advised as to the date of the visit. However, the Department reserves the right to conduct a site visit without prior notification. To ensure that all resources are in place and that the facility is meeting the needs of the students, departmental personnel may use a checklist similar to that appearing in Appendix C. Departmental personnel will also be available to the instructor or administrator to offer advice, if needed.

If problems are identified as a result of the site visit, the Department will notify the institution and ask that the issues be addressed and resolved.

7.2 ***Site Visits Resulting From Complaints***

The Department may conduct a visit to further investigate a complaint. The Departmental personnel may address the problem with the administration, instructors and students to receive their feedback. Analysis of students records and school files may also be necessary for the investigation process."

Comments

Until very recently, the shortage of private training personnel in the Department of Education has seriously restricted the ongoing monitoring of institutions. The resources have not been available to thoroughly assess ongoing programs, to conduct program assessments at the renewal of registration, to analyze financial data, to follow up on the training required of instructors, and to work with operators on many important quality-enhancing initiatives. The recent appointment of two new program monitors,

one in Western Newfoundland and Labrador and another in Central, is a move in the right direction. But these and other private institution personnel need ongoing support and a strategic plan for quality improvement.

During the first quarter of 1998, compliance audits were conducted at 15 institutions in various parts of the Province. While these audits resulted in very positive assessments of several programs and institutions, serious problems were also identified. Among the areas of concern were the following:

1. instructor training;

2. the lack of educational leadership;

3. problems with facilities;

4. the training of too many students in certain areas;

5. the need for consistent student attendance policies; and

6. the need for students to be given full and accurate information regarding programs, and what they can reasonably expect in a program, as part of an institution's marketing.

Such concerns must be systematically addressed following audit reports.

Another important monitoring initiative conducted by the Department is the *Post-Secondary Indicators Project*, conducted for all post-secondary institutions. While some private training operators were critical of certain elements of the most recent report, this initiative must be continued and indicators of quality provided annually if possible. We need both qualitive and quantitive data on educational success, not only from private institutions but from public ones as well.

Recommendations

1. The Act should be amended to incorporate a quality control system, not only for initial registration, but also for re-registration and monitoring, such a system to be prescribed in regulations. Included would be quality control initiatives such as admission tests, student evaluations, and mandatory professional development.

2. The Act should be amended to require each Institution to establish a school-community-business advisory committee to monitor and advise on:

(1) the academic performance of the students and the school;

(2) staff development activities;

(3) student evaluation of instructors and programs;

(4) school academic policies;

(5) schools admission policies and tests; and

(6) any other matter related to quality.

3. The Act should be amended to reference accreditation of programs and institutions as a means of improving quality and control and moving towards greater self-regulation (see earlier discussion of the purposes of the Private Training Corporation Board of Directors).

Notes:

(1) The Department of Education must realize that the development and implementation of such a quality control system will require additional resources. Some of these costs may be recovered from the industry.

(2) The Final Report will address the need for greater emphasis on the preparation of instructors and the improvement of teaching.

(3) Increasingly, the role of the program monitor will become one of consultation as well as evaluation.

Student Contracts

Current Provisions

Section 17 of the Act prescribes the manner in which a student contract may be rescinded. Section 4(2)(c) of the Regulations requires that a copy of the student contract accompany an application for registration. Section 13 of the Regulations makes a contract mandatory and, along with Section 14, outlines its contents. Section 15 deals with the voiding of a contract.

Comments

A student contract not only protects the consumer, but also the training institution itself against ongoing conflict. The Act should ensure that every student signs a contract before the commencement of a training program. While the details of the contract should be prescribed in regulations, specific authority should be granted to the Department of Education to regulate the nature of the information to be made available to the student-consumer before contracting, at the time of contracting, and during the tenure of the contract. Included in that information should be the nature and duration of the program, the various fees, the schedule of payment of tuition, the facilities available, the qualifications of instructors, the prerequisites for admission to the program, policy as to attendance and grading, conflict resolution mechanisms, cancellation procedures, refund policy, past job placement statistics, a statement that a job is not guaranteed at the completion of the program, program completion ratios, accreditation status, and the student's responsibility with respect to student loans.

Recommendations

1. That the Act be amended to require the signing of a comprehensive student contract prior to commencement of the program, the nature of such contract to be prescribed in regulations.

2. That the Act be amended to expand the Section dealing with the rescission of the student contract.

Student Conflict/Complaint Resolution

Current Provisions

There are few references in the Act or Regulations regarding student conflict resolution. Chapter 6 of the Policy Document includes the following:

"The Department has specific policies and procedures governing response to complaints. These policies and procedures as outlined below.

6.1 ***Initial Process***

The complainant may call the Department to register a concern. They are advised that their first course of action in resolving the issue is to address it with the administration of the Private Training Institution. The response of the Institution to the complainant should be in writing to eliminate misunderstanding in interpretation. If the issue remains unresolved to the satisfaction of the complainant they may then communicate their concerns to the Department, in writing, and attach a copy of the letter of response from the Private Training Institution.

6.2 ***Investigation***

The Department notifies the Institution that a complainant is unsatisfied with the Institution's response to their concerns and has requested the Department to initiate an investigation. If upon review of the documents the Department determines that there is insufficient information to make a decision, a site visit is conducted to collect additional information. Once the investigation has been completed, a formal report outlining the investigation results is prepared along with the identification of any actions necessary to reach a resolution. All parties are notified accordingly. If actions have been identified, the Department will follow-up to ensure compliance."

Comments

The need for clearly stated policies and procedures for dealing with student conflicts and complaints was a matter of widespread concern during the consultation period for this Review. While, as noted above, the Department has a policy statement dealing with this matter, formal conflict/complaint resolution mechanisms are not required. Institutions must have an internal conflict/complaint resolution mechanism with written policy and procedural guidelines. There must be monitoring to ensure that such a policy is implemented.

One suggestion proposed for third party conflict resolution was the establishment of a provincial committee to hear student appeals. While this approach would provide some degree of independence, it would necessarily be time-consuming and costly. The recommendation made in this Report provides for the appointment of an independent mediator as a final means of settling such disputes.

It should be added that there may, indeed, be reasons for the Department of Education itself to

investigate some complaints and take remedial action.

Recommendations

1. The Act should be amended to require the development of an internal student conflict/complaint resolution mechanism through which students can challenge administrative and academic decisions made by the institution. (Over the next year, all existing institutions should be required to submit for approval such a mechanism).

2. With respect to third party resolution, the Act should be amended to ensure that in the event of a continuing dispute between a student and an operator, the Minister may appoint a mediator to assist in resolving the dispute. Any mediation conducted pursuant to this provision should be conducted in accordance with procedures prescribed in regulations.

The cost of the mediator could be paid for from the Training Completion Plan.

Other Recommendations

1. The student aid regulations should be amended to require that new registered private training institutions be in operation for at least two consecutive years before receiving student aid designation. This would help to demonstrate their financial viability.

2. In order to reach its full potential, the Newfoundland and Labrador Association of Career Colleges should be encouraged to find new ways to reach out to the many operators who are not now members of the Association and encourage them to join. A more representative Association could become more active in offering professional development for its members, in promoting quality service for students, in monitoring the conduct of its members, and in partnering with the Department of Education and the Government in addressing the issues that face the industry.

3. The Department of Education should establish a management information system for Private Training Institutions that provides the Department with the data it requires to discharge its responsibilities.

4. In the process of preparing regulations pursuant to the revised Act, a cost-recovery program could be developed where:

(1) increased fees are charged for existing services that are to be enhanced;

(2) new fees are assessed for new services;

(3) individual institutions are charged for independent assessments made of their programs and the cost of special services provided;

(4) costs to the Department of Education are reduced by delegating selected responsibilities now being undertaken by the Department to the private sector industry or to individual institutions.

A Final Word

In this *Interim Report*, significant changes have been proposed in the legislation governing private training institutions. If implemented, these changes would result in, essentially, a new Act and new regulations, with a different philosophy and orientation. The recommendations are designed not only to correct the deficiencies of the current legislation, but also to reflect future needs where even higher quality, greater consumer protection, and more fairness in the industry will be required than at present.

Appendix A

Outline of the Final Report

1. Introduction

   - The Objectives of the Review
   - The Data Gathering Process
   - Underlying Principles

2. The Development of the Private Training System

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   - Factors Promoting Growth
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   - Some Comparisons with the Public System

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   - Improved Enforcement
   - Increased Information
   - Shared Responsibility with the Industry

6. Conclusions, Recommendations and Implications

Appendix B

Terms of Reference

Review Of The

Private Training Institutions Act

And Regulations

Without limiting the generality thereof, the Department of Education required that the following specific items be achieved:

1. Solicit input, on the regulation of private training, from the general public and appropriate stakeholders including graduates of private training institutions, students, funding agencies and, to a lesser extent, the industry itself.

2. To conduct individual consultation sessions, where appropriate, with stakeholder groups such as those listed in number one above.

3. To consult with the National Association of Career Colleges and the National Accreditation Commission to discuss legislative reform of the Private Training Institutions Act.

4. To conduct a comparative analysis of the legislation pertaining to the regulation of private schools in other Atlantic Canada jurisdictions, particularly as it relates to the establishment and administration of train-out-funds.

5. To prepare a report, including recommendations, for the Minister's review by October 15, 1998.

Appendix C

Excerpt from Nova Scotia Bill

(An Act to Regulate Private Career Colleges)

32 (1) The Minister may suspend or cancel a program or certificate of registration by giving written notice including the reasons for the decision and the effective date of suspension or cancellation to the operator of the private career college if, in the opinion of the Minister,

(a) the operator has insufficient or inadequate financial security, accommodations, facilities, equipment or materials to teach the programs or courses of occupational training set out in the operator's certificate of registration;

(b) the operator is employing instructors or instructor assistants who do not meet the requirements set out in the regulations;

(c) the operator has failed to comply with any condition or requirement imposed on the operator's certificate of registration;

(d) the operator is or is likely to become an insolvent operator;

(e) the operator's Fund fees are in arrears and the operator has failed to resolve the matter as prescribed in the regulations;

(f) the operator has furnished false information in an application or by any means of communication required under this Act or the regulations;

(g) the college has, as one of its principals, partners or shareholders, a person who was convicted of an indictable offence within the five years preceding the application or who is presently subject to criminal sanctions for conviction of an indictable offence; or

(h) the operator has failed to comply with this Act or the regulations.

(2) A notice may be given to a person pursuant to subsection (1) by being

(a) mailed, postage prepaid, by courier or other means to the address of that person shown on the registration records or to such other address as that person may, in writing, give to the Minister; or

(b) delivered to that person,

and, where notice is mailed, it is *prima facie* presumed to have been received five days after it was delivered to the post office.

(3) Where a notice given pursuant to subsection (2) is received, the registration to which the notice relates is suspended effective from the date referred to in the notice.

(4) Where a program is suspended pursuant to this Section, the operator shall not, as long as the suspension remains in effect, offer the suspended program.

(5) Where a registration is suspended pursuant to this Section, the operator shall not, as long as the suspension remains in effect, operate a private career college or act, as an agent of a person who operates a private career college, as this case may be.

(6) the Minister shall not refuse to issue or renew a certificate of registration, impose any terms on a certificate of registration or suspend or cancel a certificate of registration without giving the applicant or operator, as the case may be, an opportunity to be heard.

(7) Notwithstanding subsection (6), where the Minister considers it necessary to protect students or to protect the public interest, the Minister may immediately impose conditions on, suspend or cancel a certificate or registration or a program without giving the operator an opportunity to be heard, but shall give the operator an opportunity to be heard as prescribed in this Act or the regulations.